

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, NW
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

www.call.uscourts.gov

April 2006

MEMORANDUM

Enclosed is a copy of proposed amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit. Proposed new text is shown in bold and double-underlined, while recommended deletions are shown with strike marks through them. Also enclosed is a Table briefly describing the proposed revisions.

If you wish to offer comments concerning the proposed amendments please direct them to me at the above address in the form of a letter by May 4, 2006. Thank you for your interest.

Thomas K. Kahn
Clerk

**TABLE OF PROPOSED REVISIONS TO THE
ELEVENTH CIRCUIT RULES**

Page	Circuit Rule or IOP	Description of Proposed Revisions
139	11th Cir. R. 36-1, <u>Affirmance Without Opinion</u>	The rule is proposed to be rescinded, since only a minuscule portion of appeals are currently terminated in this manner.

UNITED STATES
COURT OF APPEALS
for the
ELEVENTH CIRCUIT

*PROPOSED REVISIONS TO ELEVENTH CIRCUIT RULES
AND INTERNAL OPERATING PROCEDURES*

- FEDERAL RULES OF APPELLATE PROCEDURE
- ELEVENTH CIRCUIT RULES
- *INTERNAL OPERATING PROCEDURES*

April 2006

FRAP 36. Entry of Judgment; Notice

- (a) **Entry.** A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:
- (1) after receiving the court's opinion — but if settlement of the judgment's form is required, after final settlement; or
 - (2) if a judgment is rendered without an opinion, as the court instructs.
- (b) **Notice.** On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

* * * *

~~11th Cir. R. 36-1 Affirmance Without Opinion. When the court determines that any of the following circumstances exist:~~

- ~~_____ (a) the judgment of the district court is based on findings of fact that are not clearly erroneous;~~
- ~~_____ (b) the evidence in support of a jury verdict is sufficient;~~
- ~~_____ (c) the order of an administrative agency is supported by substantial evidence on the record as a whole;~~
- ~~_____ (d) a summary judgment, directed verdict, or judgment on the pleadings is supported by the record;~~
- ~~_____ (e) the judgment has been entered without a reversible error of law;~~

~~and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion. **[Rescinded]**~~

11th Cir. R. 36-2 Unpublished Opinions. An opinion shall be unpublished unless a majority of the panel decides to publish it. Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority. If the text of an unpublished opinion is not available on the internet, a copy of the unpublished opinion must be attached to or incorporated within the brief, petition, motion or response in which such citation is made. But see I.O.P. 7, Citation to Unpublished Opinions by the Court, following this rule.

11th Cir. R. 36-3 Publishing Unpublished Opinions. At any time before the mandate has issued, the panel, on its own motion or upon the motion of a party, may by unanimous vote order a previously

unpublished opinion to be published. The timely filing of a motion to publish shall stay issuance of the mandate until disposition thereof unless otherwise ordered by the court. The time for issuance of the mandate and for filing a petition for rehearing or petition for rehearing en banc shall begin running anew from the date of any order directing publication.

* * * *

I.O.P. -

1. Motion to Amend, Correct, or Settle the Judgment. These motions are referred to the panel members.

2. Effect of Mandate on Precedential Value of Opinion. Under the law of this circuit, published opinions are binding precedent. The issuance or non-issuance of the mandate does not affect this result. See Martin v. Singletary, 965 F.2d 944, 945 n.1 (11th Cir., 1992). For information concerning the precedential value of opinions of the former Fifth Circuit, see Bonner v. City of Prichard, Alabama, 661 F.2d 1206 (11th Cir. 1981) (en banc) and Stein v. Reynolds Securities, Inc., 667 F.2d 33 (11th Cir. 1982).

3. Processing of Opinions. After the draft opinion has been prepared, the opinion writing judge circulates the proposed opinion to each of the other two judges on the panel. Review of another judge's proposed opinion is given high priority by the other members of the panel. When the writing judge has received concurrences from the other judges or in the case of dissent, or special concurrences, sufficient concurrence(s) to constitute a majority, the writing judge then sends the opinion to the clerk, along with the concurrences, dissent, or special concurrence, as the case may be.

4. Circulation of Opinions to Non-Panel Members. Copies of proposed opinions are not normally circulated to non-panel members. In special cases, however, a panel or member thereof may circulate a proposed opinion to other members of the court.

5. Publication of Opinions. The policy of the court is: The unlimited proliferation of published opinions is undesirable because it tends to impair the development of the cohesive body of law. To meet this serious problem it is declared to be the basic policy of this court to exercise imaginative and innovative resourcefulness in fashioning new methods to increase judicial efficiency and reduce the volume of published opinions. Judges of this court will exercise appropriate discipline to reduce the length of opinions by the use of those techniques which result in brevity without sacrifice of quality.

6. Unpublished Opinions. A majority of the panel determine whether an opinion should be published. Opinions that the panel believes to have no precedential value are not published. All non-published opinions and affirmances without opinion under 11th Cir. R. 36-1 are printed in table form in the Federal Appendix. (See for example 88 Fed.Appx. 384). Although unpublished opinions may be cited as persuasive authority, they are not considered binding precedent. Reliance on unpublished opinions is not favored by the court. The court will not give the unpublished opinion of another circuit more weight than the decision is to be given in that circuit under its own rules.

Parties may request publication of an unpublished opinion by filing a motion to that effect in compliance with FRAP 27 and the corresponding circuit rules.

7. Citation to Unpublished Opinions by the Court. The court generally does not cite to its “unpublished” opinions because they are not binding precedent. The court may cite to them where they are specifically relevant to determine whether the predicates for res judicata, collateral estoppel, or double jeopardy exist in the case, to ascertain the law of the case, or to establish the procedural history or facts of the case.

8. Release of Opinions. Prior to issuance of an opinion, information concerning the date a decision by the court may be expected is not available to counsel.

Opinions are generally released from the clerk's office in Atlanta. Upon release of an opinion, a copy is mailed to counsel and made available to the press and public at the clerk's office and at the circuit libraries. On request, the clerk will also notify counsel by telephone. Opinions are available on the Internet at www.ca11.uscourts.gov.

Opinions are subject to typographical and printing errors. Cooperation of the bar in calling apparent errors to the attention of the clerk's office is solicited.

9. Appearance of Counsel Form. Upon release of a published opinion, the name of every attorney in the appeal who has filed an Appearance of Counsel Form or is court-appointed is provided to publishers who choose to include such information in their publications. When an Appearance of Counsel Form is not filed until after a published opinion has issued, the name of that attorney is not provided to publishers.

Cross-Reference: FRAP 41